IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.774 OF 2006

In

WRIT PETITION NO.2170 OF 2003

Mr.F.A.Ahmedabadi : Appellant
(Orig.Petitioner)

V/s.

Dharam Estates & Investments Ltd. : Respondent
(Orig.Respondent)

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Mr.V.M.Bharadwaj for the appellant.

Mr.K.S.Bapat for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : NOVEMBER 8, 2006.

P.C.

1. The services of the appellant (for short the "workman"), who was working as a Data Entry Operator, were terminated by the respondent (employer) by the order dated 25.11.1987. The order of termination records that the workman was most irregular in attendance for the last several weeks and has also become most disobedient.

2. The workman raised an industrial dispute concerning termination of his services which was ultimately referred

to First Labour Court, Mumbai. In the Statement of Claim, the workman set up the case that he has been working with the employer for more than three years and his last drawn salary was Rs.1,075/- per month. He raised the grievance that his services were illegally terminated without following the process of law and without following the principles of natural justice. He has also not been paid or offered any notice pay or retrenchment compensation at the time of termination of his services. The claim was contested by the employer by filing Written Statement. In the Written Statement, the employer denied that the workman was working for more than three years. According to the employer, the workman was irregular in his attendance and was in the habit of unauthorisedly remaining absent without leave and without prior permission; he was also in the habit of reporting late for duty and disobeying reasonable orders of the superiors. The employer stated that the workman was paid one month’s wages in lieu of notice, salary for the month of November, 1987 and leave wages on 25.11.1987 i.e. the date of termination of his services. The workman was not entitled to retrenchment compensation as his services were terminated due to misconduct.

3. Along with the Written Statement, the employer placed on record two statements: (i) the statement showing the number of days on which the workman remained

unauthorisedly absent; and (ii) the statement showing the number of days on which the workman reported late for duty and left early without permission.

4. Since no domestic inquiry was held into the alleged misconduct, the employer led the evidence before the Labour Court to prove the misconduct.

5. No evidence in rebuttal was led by the workman.

6. The First Labour Court by its judgement dated 21.3.1998 rejected the reference.

7. The workman filed review application before the Labour Court which came to be rejected on 16.4.2003.

8. The workman then filed Writ Petition before this Court which came to be dismissed on 31.3.2006. Aggrieved thereby, the present appeal has been preferred.

9. The counsel for the appellant raised two-fold submission before us. First, he contended that no prior permission was obtained by the employer before leading the evidence in proof of the charge of misconduct and, therefore, the evidence led by the employer was of no worth. The second submission is that no adequate opportunity was given to the workman to lead evidence.

10. We are afraid, none of the contentions has any merit.

11. Without multiplying the authorities, we may refer to one judgement of the Supreme Court in the case of Delhi Cloth and General Mills Co. v. Ludh Budh Singh, AIR 1972 S.C. 1031, wherein the legal position has been crystalised in para 60 of the report thus:-

> "60. From the above decisions the following principles broadly emerge:
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> (1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.
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> (2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.
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> (3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and

proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the

> Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.
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> (5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.
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> (6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it."

12. The Supreme Court has ruled in clear terms that if the management had not held any domestic inquiry, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. That is what the employer did in the present case. Before terminating the services of the workman, no domestic inquiry was held in respect of the alleged misconduct and, therefore, before the Labour Court, the employer straightaway adduced evidence to prove the misconduct. In the circumstances,

no permission of the Labour Court was necessary for leading evidence in proof of the misconduct.

13. The first contention of the appellant has no merit and is over-ruled.

14. From the available material, two things emerge. First, that on behalf of the employer, witness Arun Dharambir Aggarwal, whose affidavit was filed by way of examination-in-chief, was cross-examined. The record also shows that the workman was given opportunity to lead evidence in rebuttal, but he did not avail of that opportunity. The workman instead, submitted written submissions before the Labour Court. It will thus be seen that adequate opportunity was given to the workman and it cannot be said that the principles of natural justice were violated in the proceedings before the Labour Court.

15. The rejection of the reference by the Labour Court, in the circumstances, cannot be said to suffer from any infirmity and in this view of the matter, dismissal of the Writ Petition by the learned single Judge cannot be faulted.

16. Appeal has no merit and is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.